

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
Proposals to Modify the Commission's)	
Rules Relating to High-Cost)	
Universal Service Support)	
)	

REPLY COMMENTS OF PETROCOM LICENSE CORPORATION

PETROCOM LICENSE CORPORATION

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SUMMARY

PetroCom License Corporation submits its reply comments regarding certain proposals developed by members and staff of the Federal-State Joint Board on Universal Service (“Joint Board”) to modify the Commission’s rules relating to the high-cost universal service support program of the Universal Service Fund. Two of the Joint Board proposals address how an applicant for Eligible Telecommunications Carrier (“ETC”) designation would establish that it is a “rural carrier” for purposes of determining eligibility for high-cost universal service support.

In considering these proposals, PetroCom urges the Commission to base the definition of “rural carrier” on population density served or a similar measure and not on geographic distinctions based on the service areas of incumbent local exchange carriers (“ILECs”). PetroCom generally urges the Commission to facilitate ETC designation and access to high-cost support by competitive wireless carriers such as PetroCom, regardless of the existence of an ILEC in the area in which the carrier provides service.

PetroCom also opposes proposals that would create a distinction between wireless and wireline carriers in the type of support available to each.

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PetroCom License Corporation (“PetroCom”), pursuant to the provisions of Section 1.415 and 1.1419 of the rules and regulations of the Federal Communications Commission (“FCC” or “Commission”) and the invitation extended by the Commission in its Public Notice released on August 17, 2005^{1/} hereby submits its reply comments regarding certain proposals developed by members and staff of the Federal-State Joint Board on Universal Service (“Joint Board”) to modify the Commission’s rules relating to the high-cost universal service support program of the Universal Service Fund (“USF”).

Two of the Joint Board proposals address how an applicant for Eligible Telecommunications Carrier (“ETC”) designation would establish that it is a “rural carrier” for purposes of determining eligibility for high-cost universal service support.^{2/} In considering these proposals, PetroCom urges the Commission to base the definition of “rural carrier” on population

^{1/} Federal-State Joint Board on Universal Service Seeks Comment on Proposals to Modify the Commission’s Rules Relating to High-Cost Universal Service Support, CC Docket No. 96-45, Public Notice, FCC 05J-1 (rel. Aug. 17, 2005) (“Public Notice”).

^{2/} Both the Holistically Integrated Package (“HIP”) and the Universal Service Endpoint Reform Plan (“USERP”) address this issue. *See* Public Notice at 16, 25.

density served or a similar measure and not on geographic distinctions based on the service areas of incumbent local exchange carriers (“ILECs”). PetroCom generally urges the Commission to facilitate ETC designation and access to high-cost support by competitive wireless carriers such as PetroCom, regardless of the existence of an ILEC in the area in which the carrier provides service. Finally, PetroCom opposes those proposals that would create a distinction between wireless and wireline carriers in the type of support available to each.

I. BACKGROUND

PetroCom is a full-service telecommunications and network solutions company serving the business community, with particular emphasis in the energy industry. Headquartered in New Orleans, Louisiana (with offices in Lafayette, Louisiana and Houston, Texas) and founded in 1983, PetroCom was the first offshore cellular network in the world. What began as a single cell site off the coast of Galveston, Texas in 1986 quickly grew into a 95,000-square mile cellular network in the Gulf of Mexico (the “Gulf”), reaching from Brownsville, Texas to Mobile, Alabama.

PetroCom’s cellular network consists of an array of cell sites and cell extenders located on offshore platforms, providing seamless, contiguous coverage in the Gulf. The cell sites are connected to its cellular switch in New Orleans, Louisiana via a satellite network. PetroCom also has extensive roaming agreements with a variety of companies, making its system fully compatible with most North American systems and able to access any phone, anywhere, worldwide.

In addition to its cellular operations, PetroCom built and maintains a C-band and Ku-band satellite network, which routes traffic back to its New Orleans switch and teleport facility. In 1995, PetroCom took this satellite expertise, commercialized it, and today operates one of the

industry's largest, most respected, Very Small Aperture Terminal ("VSAT") network, with over 100 active remote sites.

Recently, PetroCom constructed, tested and implemented the first digital cellular network in the Gulf of Mexico.^{3/} The new network employs GSM technology to provide enhanced, secure, and high-speed communications for companies in the offshore industry. The network also uses Enhanced Data for GSM evolution ("EDGE") technology to enable the delivery of advanced mobile data services, including high-speed Internet access, video downloading, and full multimedia messaging.

The Commission seeks comment on the proposals developed by the Joint Board's members and staff. In considering these proposals, the Commission should adopt plans that would modify the rules in a way that would permit entities like PetroCom to seek ETC designation in order to secure universal service support for high cost areas. Other wireless telecommunications carriers have sought, and secured designation as an ETC.^{4/} Yet, because of the rules' continued reliance on ILEC characteristics in recognizing rural carriers, PetroCom has been unable to seek ETC designation.

Currently, a carrier seeking ETC designation from the Commission must submit a petition containing certifications and information regarding services to be offered, advertisement

^{3/} See Press Release, PetroCom LLC, PetroCom Readies Gulf's First Digital Cellular Network, (rel. April 26, 2004), available at www.petrocom.com/news/index.html#press.

^{4/} See, e.g., Federal-State Joint Board on Universal Service, Guam Cellular and Paging, Inc. d/b/a Saipancell Petition for Designation as an Eligible Telecommunications Carrier on the Islands of Saipan, Tinian, and Rota in the Commonwealth of Northern Mariana Islands, CC Docket No. 96-45, *Memorandum Opinion and Order*, DA 04-2268 (rel. July 23, 2004); Federal-State Joint Board on Universal Service, Highland Cellular Inc. Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia, CC Docket No. 96-45, *Memorandum Opinion and Order*, FCC 04-37 (rel. April 12, 2004).

of those services and a description of geographic area(s) for which it seeks ETC designation.^{5/}

One aspect of determining the geographic area within which a carrier will be granted ETC status is through examination of where the carrier will provide universal service supported services.

The geographic segment within which service is proposed to be offered generally corresponds to an ILEC's entire service territory within a state.^{6/} This ILEC centered definition of geographic area for ETC purposes is problematic for carriers with service areas that are not served by an ILEC, such as PetroCom.

In June 2004, the Commission issued a *Notice of Proposed Rulemaking* ("NPRM") seeking comment on proposed changes to the ETC designation process.^{7/} In response to the NPRM, PetroCom submitted comments urging the Commission to not premise ETC designation on a comparison to the local ILEC service area. In February 2005, the Commission issued a *Report and Order* adopting additional minimum requirements, proposed in the NPRM, for a telecommunications carrier to be designated as an ETC.^{8/} Among other things, the Commission stated that it would require an applicant for ETC status to "offer local usage plans comparable to those offered by ILECs in the areas for which it seeks designation."^{9/} Despite the comments, the Commission did not depart from its ILEC/wireline focus. In the *Report and Order*, the Commission also did not address the possibility that a service area might not be served by a LEC in an area like the Gulf of Mexico. In fact, in addition to the requirements noted above, the

^{5/} Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act, Public Notice, 12 FCC Rcd 22947, 22948-49 (1997).

^{6/} Federal-State Joint Board on Universal Service, *Order*, 19 FCC Rcd 11538, 11543-44 ¶ 12 (2004) ("*Rural High Cost Order*").

^{7/} Federal-State Joint Board on Universal Service, *Notice of Proposed Rulemaking*, 19 FCC Rcd 10800, 10801-02 ¶¶ 2-4 (2004).

^{8/} Federal-State Joint Board on Universal Service, *Report and Order*, 20 FCC Rcd 6371 (2005) ("*2005 Order*").

^{9/} *Id.* at 6372 ¶ 2 (emphasis added).

Commission made it more difficult for PetroCom to seek ETC status by mandating that all future ETC designation orders will include the name of each incumbent ILEC in the study area, a statement of whether the ETC has been designated in all or part of each incumbent ILEC's study area and a list of wire centers in which an ETC has been designated.^{10/}

PetroCom's inability to seek ETC designation has recently become particularly inequitable, in light of Hurricanes Katrina and Rita. Those natural disasters have devastated communications services in and around the Gulf of Mexico as well as those providers capable of providing communications services in the Gulf. As the Commission is aware, PetroCom was severely affected by Hurricanes Katrina and Rita.^{11/} The Commission has recently noted that certain carriers receiving high cost support can use the funds to rebuild infrastructure destroyed by Hurricane Katrina.^{12/} However, because of the current structure of the Commission's rules, PetroCom is unable to access high cost support funds for any purpose, let alone to re-build its infrastructure. Accordingly, PetroCom is pleased to have the opportunity to submit the following reply comments to urge the Commission, in its consideration of, among others, the HIP and USERP proposals, to address the possibility that a service area might not be served by a LEC and to rectify this current inequity in the Commission's rules. A modification of the ETC designation procedures will permit PetroCom, like other wireless carriers, to seek ETC designation to provide valuable service to the Gulf of Mexico and for the Commission to serve

^{10/} *Id.* at 6399 ¶ 65.

^{11/} *See, e.g.,* PetroCom License Corporation, Request for Special Temporary Authority; File No. SES-STA-20050916-01268 (granted Sept. 13, 2005).

^{12/} Federal-State Joint Board on Universal Service, CC Docket Nos. 96-45 and 02-6, WC Docket Nos. 02-60 and 03-109, *Order*, FCC 05-178 ¶ 57 (rel. Oct. 14, 2005) ("*Katrina USF Order*").

the public interest by allowing PetroCom access to the same funds as other Katrina victims to rebuild its infrastructure.^{13/}

II. COMMENTS

The Joint Board presents four potential approaches for rural high-cost USF support methodologies in the Public Notice: (1) State Allocation Mechanism (“SAM”); (2) Three Stage Package for Universal Service Reform; (3) HIP; and (4) USERP. All of these plans contemplate some type of a unified system under which the distinction between rural and non-rural carrier, which is currently tied to the corresponding ILEC service area, is eliminated and support is based on simply whether a rural area is served by the ETC applicant. Further, the USERP proposes eliminating a comparison of the cost basis of wireless universal service support to incumbent wireline carriers.^{14/} The USERP proposal is based on presumed cost, regulatory, rate and functional differences between wireless and wireline services that limit the substitution of one for the other.^{15/} Under USERP, wireless ETCs would receive funding through a fund available only to wireless carriers.^{16/} The goal of the plan would be to “substantially improve wireless coverage in unserved areas with a particular emphasis on unserved areas with major roads.”^{17/}

A. ETC Designation Procedures Should Not Be ILEC-Centric

Currently, a carrier’s ability to secure ETC designation and universal service funding is based on examination of the service area where the carrier will provide universal service supported services. A service area is defined as a “geographic area established by a state

^{13/} The Commission could also, in the alternative, make clear that it would accept waivers of its ETC designation procedures for rural carriers to clarify the ability of carriers like PetroCom to seek ETC status in the Gulf and other areas where there is no ILEC.

^{14/} Public Notice at 26

^{15/} *Id.*

^{16/} *Id.* at 27.

^{17/} *Id.*

commission for the purpose of determining universal service obligations and support mechanisms.”^{18/} The states and Commission have defined geographic area as a geographic segment of an ILEC’s telephone operations. The geographic segment generally corresponds to an ILEC’s entire service territory within a state.^{19/} For areas served by rural telephone companies the service area is the rural phone company’s study area unless the state commission or FCC establishes a different definition.^{20/} As noted above, PetroCom operates a cellular network in the Gulf of Mexico. There is not, nor has there ever been, an ILEC in the Gulf. Thus, PetroCom is unable to provide the FCC with information regarding ILEC costs in order to seek ETC designation. Therefore, the existing ETC designation process is too restrictive to allow for the consideration of an ETC designation application by PetroCom.

Under Section 214(e)(6) of the Act, the FCC may designate ETCs “in the case of a common carrier ...not subject to the jurisdiction of a State commission” that meets the criteria of Section 214(e)(1).^{21/} Section 214(e)(6) is not further limited to common carriers where an ILEC provides service. The Joint Board has stated that Congress intended for the states to evaluate specific factual situations and “exercise broad discretion in reaching their ultimate conclusion regarding the public interest, convenience and necessity.”^{22/} The FCC should employ permissive federal guidelines to expand its own public interest analysis to permit carriers serving areas not otherwise served by an ILEC to secure ETC designation. For the Gulf region, this would allow

^{18/} 47 U.S.C. 214(e)(5).

^{19/} *Rural High Cost Order*, 19 FCC Rcd at 11543-44 ¶ 12.

^{20/} Federal-State Joint Board on Universal Service, *Report and Order*, 12 FCC Rcd 8776, 8878 ¶ 182 (1997) (“*First Report and Order*”).

^{21/} 47 U.S.C. § 214(e)(6).

^{22/} Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Notice of Proposed Rulemaking*, FCC 04-127, ¶ 46 (rel. June 8, 2004).

carriers such as PetroCom to secure ETC designation and, consequently, access to high-cost support mechanisms that would enable it to better provide service to the public.

While PetroCom urges the Commission to take broader steps that would permit it to seek ETC designation, the Commission's failure to separately consider telecommunications carriers in the Gulf of Mexico is, at a minimum, antithetical to the D.C. Circuit's findings in *Petroleum Communications, Inc. v. FCC*.^{23/} There, the Court found that the Commission arbitrarily failed to differentiate between water-based and land-based licensees despite the substantially different circumstances faced by waterborne carriers.^{24/} In the instant context, the D.C. Circuit's ruling in *Petroleum Communications* demands that the Commission take into account the differences between areas served by ILECs and areas unserved by ILECs, and permit carriers serving areas not otherwise covered by an ILEC, such as the Gulf, to secure ETC designation to serve the Gulf.

In addition, PetroCom's proposed approach is consistent with the public interest. As demonstrated above, PetroCom provides a valuable resource for its subscribers, including companies in the offshore industry. Unlike most land-based cellular systems, cellular operations in the Gulf cover a small population over a very large expanse of territory. PetroCom's service area is approximately 95,000 square miles. The majority of PetroCom's customers operate from fixed locations on oil platforms. The nature of the Gulf means that it is a high cost area for PetroCom to serve. For example, PetroCom's cell sites can only be installed or maintained by crews dispatched by helicopter. While PetroCom is committed to provide services throughout its licensed service area, it is the type of area that should be considered high cost under the ETC guidelines, regardless of the presence of an ILEC.

^{23/} 22 F.3d 1164, 1172 (D.C. Cir. 1994).

^{24/} *Id.* at 1172.

PetroCom is often the only communications service that permits oil and gas industry employees to communicate for both business and personal purposes. Particularly in an area like the Gulf of Mexico, where there may be no other communications services, it is critical that PetroCom's services continue to be available. ETC designation would benefit the public by allowing PetroCom to continue to provide its valuable service. For example, despite the high cost of providing service in the Gulf, because of competitive pressures, PetroCom is often required to offer roaming at uneconomic rates. Like other rural carriers, if PetroCom received universal service support, it could continue to provide roaming at competitive rates without jeopardizing its continued ability to render service.

Amending the Commission's rules so that PetroCom could secure ETC status and access to high-cost support at this time would be especially meaningful in light of the impact of Hurricanes Katrina and Rita. PetroCom and its customers were severely affected by the hurricanes. Permitting PetroCom to obtain ETC designation with access to high-cost support would be "appropriate given the overwhelming public interest in assisting those high-cost areas struck by the worst natural disaster in the nation's history."^{25/}

Recent technological advances have resulted in increasing demand by PetroCom's subscribers for Internet access, data transmission and system control, and data acquisition ("SCADA") applications, among other services, which PetroCom provides in the Gulf. In addition, as noted above, PetroCom recently introduced a new network with GSM technology to provide enhanced, secure, and high-speed communications for its subscribers. These public benefits and the high cost of providing them should be considered in any public interest analysis for ETC designation, regardless of the lack of an ILEC presence in the Gulf.

^{25/} *Katrina USF Order* ¶ 55.

B. Support Methodologies Should Be Technology Neutral

While the Joint Board's proposals are intended to provide a mechanism for wireless carriers to more readily receive USF support, the comments in this proceeding demonstrate that these proposals may well exacerbate the ILEC-centric nature of the high-cost program.

Dobson Cellular Systems notes that the USERP proposal limits wireless carriers to funding for the construction of new facilities, even though section 254(e) requires that ETCs receive support for the "provision, maintenance, and upgrading of facilities and services."^{26/} The USERP proposal would, therefore, undermine competitive neutrality because it would limit wireless carriers participation in the high-cost program while permitting the ILECs to continue as "full-fledged ETCs with all the benefits such status conveys." This problem would be exacerbated by the USERP proposal that wireline ETCs continue to secure support based on ILEC costs.^{27/} Sprint Nextel also opposes the USERP proposal's separate portability fund, in part, because it imposes additional geographic restrictions on wireless high-cost funding that do not exist for wireline carriers.^{28/} PetroCom agrees with Sprint Nextel. PetroCom also supports CTIA, which opposes the separate fund in the USERP proposal as a "separate and unequal" high-cost fund.^{29/}

PetroCom further agrees with Dobson, Sprint Nextel and CTIA that discriminatory treatment of wireless carriers such as that contemplated by the USERP proposal is antithetical to the statutory mandate of competitive neutrality set forth in the Communications Act of 1934, as amended ("Act"). As Sprint Nextel and CTIA demonstrate, the Commission has clearly

^{26/} Dobson Cellular Systems Comments at 21 (citing 47 U.S.C. § 254(e)).

^{27/} *Id.* at 21.

^{28/} Sprint Nextel Comments at 6.

^{29/} *See* CTIA Comments at 9-10.

recognized the importance of competitive neutrality by emphasizing that its universal service mechanisms and rules “neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another.”^{30/} Further, as both Sprint Nextel and CTIA point out, the courts have upheld the principle of nondiscrimination in the universal service context. In *Alenco Communications v. FCC*, the Fifth Circuit held that the universal service “program must treat all market participants equally -- for example, subsidies must be portable -- so that the market, and not local or federal regulators, determines who shall compete for and deliver services to customers,” a finding it noted “is made necessary not only by the realities of competitive markets but also by statute.”^{31/}

^{30/} *First Report and Order*, 12 FCC Rcd at 8801 ¶ 47 (defining the principle of competitive neutrality).

^{31/} 201 F.3d 608, 616 (5th Cir. 2000).

III. CONCLUSION

For the foregoing reasons, PetroCom respectfully urges the Commission to consider alternative carriers such as PetroCom in its assessment of proposals to modify the Commission's rules relating to high-cost universal service support. The FCC should facilitate designation of ETCs and access to high-cost support by competitive wireless carriers such as PetroCom, regardless of the existence of an ILEC in the area in which the carrier provides service. Facilitating ETC designation and access to high-cost support in such a manner will serve the public interest.

Respectfully submitted,

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